

Civil Misc. Writ Petition No. 597 (M/S) of 2002

Kishan Singh Petitioner.

Versus

The District Judge, Bageshwar
and two Others Respondents.

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Hon'ble P.C. Verma,J.

This writ petition has been filed by the petitioner against the judgment and order dated 20.04.2002, passed by the District Judge, Bageshwar, in Eviction Appeal No. 15 of 2001.

An Appeal was filed against the judgment and order dated 08.11.2001 passed by the Prescribed Authority/Parganadhikari, Bageshwar in Case No.22/2000-2001, under Section 4/5/7 of Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred the Act). The notice was issued to the petitioner under Section 4 (i) of the Act, requiring him to show cause as to why he be not evicted from the disputed land.

Learned counsel for the petitioner contended that the proceedings relating to agricultural land could not have been initiated under the Uttar Pradesh (Eviction of Unauthorised Occupants) Act. If the petitioner was unauthorized occupant on any agricultural land belonging to State, the proceedings under Section 122-B of U.P. Zamindari Abolition And Land Reforms Act, 1950 cold be drawn against him, as the land held by a tenure holder for the time being is not a public premises.

I find force in the contention of the learned counsel for the petitioner. The definition of 'land' as defined under Sec.3 (14) of the U.P. Zamindari Abolition And Land Reforms Act, 1950 reads as under: -

“Land” means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming.”

In the present case, the disputed land is admittedly used by the petitioners for the purposes of agriculture as is evident from the statement on record that the petitioners are in occupation since 1380 Fasli. The U.P. Z.A. & L.R. Act itself provides procedure for eviction of unauthorized occupants under Sec.122-B of the U.P. Z.A. & L.R.Act. The agricultural land is not covered under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, as evident from the definition of U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972, which reads as under: -

“2(b) **‘Premises’** means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes-

- (i) the garden, grounds and outhouses, if any, appertaining to such building or part of a building, and
- (ii) any fittings or fixtures affixed to or any furniture supplied with such building or part of a building for the more beneficial enjoyment thereof,

but does not include land which for the time being is held by a tenure-holder under any law relating to land tenures;”

“2(b) **‘public premises’** means any premises belonging to or taken on lease or requisitioned by or on behalf of the State Government, and includes any premises belonging to or taken on lease by or on behalf of-

- (i) any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty-one per cent of the paid up share capital is held by the State Government; or
- (ii) any local authority; or

- (iii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by the State Government; or
- (iv) any society registered under the Societies Registration Act, 1860, the governing body whereof consists, under the rules or regulations of the society, wholly or public officers, or nominees of the State Government, or both;

and also includes-

- (i) Nazul land or any other premises entrusted to the management of a local authority (including any building built with Government funds on land belonging to the State Government after the entrustment of land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other local authority under any law relating to land tenures);
- (ii) any premises acquired under the land Acquisition Act, 1894 with the consent of the State Government for a company (as defined in that Act) and held by that company under an agreement executed under Section 41 of the Act providing for re-entry by the State Government in certain conditions;”

Therefore, a conjoint reading of the definitions given under the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 of the premises and public premises clearly exclude the application of provisions of the U.P. Public Premises (Eviction of Unauthorised Occupants) act in case a tenure holder holds the land for the time being. In the present case, the evidence is on record that the petitioner was in possession of the disputed land from 1380 Fasli. Therefore, at the time when proceedings were initiated for eviction, the petitioner was a tenure holder for the time being.

Hence the proceeding could only be drawn under the U.P. Z.A. & L.R. Act and could not have been drawn under the Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants), Act. Thus, the

proceedings initiated under the U.P. Public Premises (Eviction of Unauthorised Occupants), Act which gave rise to this writ petition, were without jurisdiction.

The appellate court in its judgment has also recorded the finding as under:-

“though the land may have been entered in the name of HISSEDAR in the old settlement but such land has been vested in the State after the passing of the U.P.Zamindari Abolition and Land Reforms Act and the Kumaon and Uttarakhand Zamindari Abolition Act. Accordingly the land which was entered in the name of HISSEDAR as the KHAIRKARI LAND in the old settlement, the same land was vested in the State, so the land which was vested in the State it should be entered in the name of State in the new settlement. As the land in question was not related to the private wells, trees in Abadi and building at the time of the resting of land so it was not possible to be entered in the name of HISSEDAR in the new settlement.”

From the perusal of the above portion also it is evident that the land is an agricultural land.

In view of above, the writ petition is allowed. The judgment passed by Prescribed Authority was well as the appellate authority is hereby quashed. However, it is open for the State to evict the petitioner from the disputed land in accordance with the provisions of U.P.Z.A. & L.R. Act. It is also open for the petitioner to get his title declared by filing a suit under Section 229-B of U.P.Z.A. & L.R. Act. No order as to costs.

11.11.2002
P.Singh

(P.C. Verma, J.)

